

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MOONBUG ENTERTAINMENT
LIMITED, et al.,

Plaintiffs,

v.

BABYBUS (FUJIAN) NETWORK
TECHNOLOGY CO., LTD, et al.,

Defendants.

Case No. [21-cv-06536-EMC](#)

**ORDER RE WITNESS DISCLOSURES
AND CROSS DISCLOSURES AND
DEPOSITION DESIGNATIONS AND
COUNTERDESIGNATIONS FOR JULY
7, 2023**

The Court has reviewed Plaintiffs' witness disclosures, Defendants' witness cross disclosures, Plaintiffs' deposition designations, and Defendants' deposition counter-designations, as well as the parties' objections. The Court makes the following rulings.

For future filings of deposition designations and counter-designations, the Court directs the parties to include quotation of the actual language of the designations and cross-designations with the citations.

For future filings of disclosures and cross-disclosures of exhibits, the Court directs the parties to include a brief description of each exhibit with the exhibit number. The Court also directs the parties to group common exhibits (e.g., Super JoJo videos, CoComelon works) when making objections that apply to an entire group.

IT IS SO ORDERED.

Dated:

United States District Court
Northern District of California

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EDWARD M. CHEN
United States District Judge

DEFENDANTS' OBJECTIONS TO PLAINTIFFS' WITNESS DISCLOSURES

Defendants have made objections to approximately 400 exhibits to be used on July 7, 2023. Docket No. 487. The Court **OVERRULES** the objections, provided that foundation and authentication are established at trial. The Court **RESERVES JUDGMENT** on translation issues and will follow the Court's previously discussed protocol at trial.

PLAINTIFFS' OBJECTIONS TO DEFENDANTS' WITNESS CROSS DISCLOSURES

The Court reviewed Plaintiffs' objections and addresses them below.

Witnesses	Trial Exhibit No.	P's Objections	Court's Rulings
Naiyong Yan	<p>Defendant's Demonstrative 1</p> <p>Babybus explains "Demonstrative 1 was taken while playing BabyBus' "Colors" app, available for download on the Apple App store at https://apps.apple.com/us/app/colors-babybus/id973832743." Docket No. 473.</p>	Not in evidence or disclosed in discovery.	The Court RESERVES JUDGMENT on this objection, depending on whether the document was in evidence or produces in discovery.
Naiyong Yan	<p>Defendant's Demonstrative 2</p> <p>Demonstrative 2 is a montage taken from the following publicly accessible YouTube links with the specific timestamps of the clips noted in parentheses below. BabyBus is also concurrently serving the full length YouTube video available for download at the sendfile provided: https://www.youtube.com/watch?v=mY1hwb-Nxts (1:00-1:13) https://www.youtube.com/watch?v=3havAZG0cjk (0:52-1:05) https://www.youtube.com/watch?v=gtaMCnClpGIOops (1:37- 1:52) https://www.youtube.com/watch?v=IAPK7T3iNRc (3:50-4:15)</p>	Not in evidence or disclosed in discovery.	The Court RESERVES JUDGMENT on this objection, depending on whether the YouTube videos included within have been entered into evidence.

DEFENDANTS' OBJECTIONS TO PLAINTIFFS' DEPOSITION DESIGNATIONS & PLAINTIFFS' OBJECTIONS TO DEFENDANTS' DEPOSITION COUNTERDESIGNATIONS

The Court reviewed Defendants' objections and counterdesignations and Plaintiffs' designations and objections to the counterdesignations. The Court addresses them below.

Witnesses	Deposition Designation	D's Objections and Counter-Designations	P's Objections	Court's Rulings
Shaojie He	<p>42:16-43:8</p> <p>Q. So Ms. Fang in the BabyBus legal department told you she needed -- certain images that she needed to do the registration process, correct?</p> <p>A. That's correct.</p> <p>Q. And in response to Ms. Fang's request, you looked for and located images in Flash on your local computer, correct?</p> <p>A. Well, yes.</p> <p>Q. And once you located those images in Flash on your local computer, you outputted them to picture files on your computer, correct?</p> <p>A. Correct.</p> <p>Q. And then you communicated or transmitted those outputted picture files that were on your</p>	<p>FRE 106; FRCP 32(2)(6)</p> <p>*cross-designating 43:8-10</p> <p>A. That is correct. However, I am not further communicating with her. I just went ahead and sent the request of the documents to her.</p>	<p>To the extent Defendants assert their designations as affirmative designations, FRE 106, FRE 32(a)(4) (counterdesignations are permitted only under the rule of completeness, and Defendants cannot avoid this requirement by purportedly "redesignating" their counter designations as affirmative designations).</p> <p>To the extent Defendants assert their designations as affirmative designations, FRE 32(a)(4) and FRE 106 because this witness is not "unavailable."</p>	<p>OVERRULED (P's objection).</p> <p>Rule 32 also provides that when "a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced." Fed. R. Civ. P. 32(b)(6); <i>see also</i> Fed. R. Evid. 106 ("If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time."); Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 2148 (3d ed. 2010). "This principle is known as "the rule of completeness" and it exists to avert misunderstanding or distortion caused by introduction of only part of a document or recording." <i>In re Pac. Fertility Ctr. Litig.</i>, No. 18-CV-01586-JSC, 2021 WL 2075560, at *1 (N.D. Cal. May 24, 2021) (citing <i>United States v. Vallejos</i>, 742 F.3d 902, 905 (9th Cir. 2014)). For instance, testimony cannot be designated as counter-designations under FRCP 36(a)(6) and FRE 106 when they "fail[] to correspond to any deposition testimony" originally</p>

	computer to Ms. Fang in legal in response to her request, correct? A. That is correct. However, I am not . . .			designated. <i>See Chaudhry v. Angell</i> , No. 173-182, 2021 WL 4461667, at *8 (E.D. Cal. Sept. 29, 2021), <i>aff'd sub nom. Chaudhry v. Aragon</i> , 68 F.4th 1161 (9th Cir. 2023). However, Rule 106 is essentially a matter of timing, particularly where the material at issue is deposition testimony. If the witnesses at issue had appeared live and testified as to those matters designated in the deposition transcript, Defendants could properly have elicited the clarifying testimony (along the lines of the counter-designations) on cross. This especially so with respect to Plaintiffs' calling of adverse witnesses. The Court has the power to order the testimony of witnesses. FRE 611. In this instance, this counter-designation completes the last answer in the designation that was cut off, so including it averts misunderstanding or distortion caused by introduction of only part of the deposition.
Shaojie He		*cross-designating 73:15-19, 73:23-74:5, 74:11-22, 75:10-11, 75:15-18, 75:20-76:10, 76:16-77:9, 86:20-21, 86:25-87:10, 87:23-88:1 without corresponding to any original designations	FRE 106, FRCP 32(a)(6) (not designated in response to any of Plaintiffs' designation). <i>See Chaudhry v. Angell</i> , No. 173-182, 2021 WL 4461667 (E.D. Cal. Sept. 29, 2021) (striking counter	OVERRULED (P's objection). While there is no original designation here that the counter-designations would complete, see above, the Court's explanation on Rule 611.

			designations that “fail to correspond to any [designated] deposition testimony”), aff’d sub nom. Chaudhry v. Aragon, 68 F.4th 1161 (9th Cir. 2023). Counter-designated testimony also concerns a different exhibit than one discussed in designated testimony. To the extent Defendants assert their designations as affirmative designations, FRE 106, FRE32(a)(4) (counterdesignations are permitted only under the rule of completeness, and Defendants cannot avoid this requirement by purportedly “redesignating” their counter designations as affirmative designations).	
Jianing Gao	8:17-18 THE WITNESS: I was involved in JoJo project.	35:24-36:4, 36:7-11, 36:17- 22 Q. When I say "Super JoJo project," do you understand what I mean? A. Super JoJo project means Season 1, Super JoJo project.	To the extent Defendants assert their designations as affirmative designations, FRE 32(a)(4) and FRE 106 because this witness is not “unavailable.”	OVERRULED (P’s objection). See above, the Court’s explanation on Rule 611.

1			Q. And what was your role if any on the Super JoJo project?	
2			Q. Were you the main builder of the 3D character modelling of Super JoJo?	
3			A. Correct.	
4			Q. Did you build the Super JoJo 3D model from scratch?	
5			A. Correct.	
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9	Jianing Gao	25:15	FRE 106; FRCP 32(a)(6)	OVERRULED (P's objection). See Court's explanation above on FRE 106 and FRCP 32(a)(6). The cross-designated testimony averts misunderstanding or distortion caused by introduction of only part of the deposition.
10		A. ...was a bug, that's why I sent this message.	*cross-designating 20:7-9; 20:11-14; 25:13-15; 22:4-23:3; 23:5-14; 23:17-20	
11			Q. What did Coco do as you referred to it in Exhibit 290?	
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13			THE WITNESS: I just heard about the syllables Coco in my communication with the person who gave me the feedback but I don't know what does this Coco mean.	
14			...	
15			THE WITNESS: What happened during that time, I cannot remember clearly. But because there was a bug, that's why I sent this message.	
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17			What did you mean by "fake cut" in Exhibit 290?	
18			A. It is a technical term used by movement team.	
19			Q. What do you mean, "it's a	
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		<p>technical term used by the movement team"?</p> <p>A. The camera usage methods in the production of movements.</p> <p>Q. What do you mean, "camera usage methods in the production of movements"?</p> <p>A. This question can be directed to movement, because as far as I know when there are bugs in modelling, we can use this fake cut to avoid bugs.</p> <p>Q. How does using a fake cut avoid bugs?</p> <p>A. When modelling or when models are used in storyboard, there are bugs like overlapping of images or distortion of figures or they simply do not look real. So prior to that happening, we can use a lens cutting to avoid that.</p> <p>Q. What do you mean by "lens cutting"?</p> <p>A. You can direct this question to movement team. I only know that there is such a technique but I don't know how to use it. But I can tell them that this is a possible technique to be used.</p> <p>Q. That's what you said in Exhibit 290?</p> <p>...</p>		
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1			THE WITNESS:· What I said here was after a bug emerged, we could use lens cutting to solve that. BY MR. TYZ: Q.· How did you know lens cutting could solve that bug? A.· Because this is a way to avoid modelling bug.· This is a technical method to avoid bugs. Q.· And it's what Coco did according to Exhibit 290? ... THE WITNESS:· Coco was only a word I heard of when we talked about the bugs.· This was only a word I overheard.· I didn't know what Coco was referring to.		
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16	Jianing Gao	26:8-17 Q. Exhibit 291 is a message from you to Xinfeng Lin, Jian Lin, Xiaohu Chen, with a time stamp April 2nd, 2021, and the text says, "The storyboard drawn is the same as Coco's cut. It doesn't matter." Do you see that? A. Yes, I see the message. Q. And it's a message that	FRE 106; FRCP 32(a)(6) *cross-designating 26:17-21 A. Yes. I wrote this message same as the previous scenario. So I created the models for storyboard but there were bugs. So after checking the models, I said using cutting can avoid the bugs.	To the extent Defendants assert their designations as affirmative designations, FRE 106, FRE 32(a)(4) (counterdesignati ons are permitted only under the rule of completeness, and Defendants cannot avoid this requirement by purportedly "redesignating" their counter designations as affirmative designations). To the extent Defendants	OVERRULED (P's objection). See Court's explanation above on FRE 106 and FRCP 32(a)(6). This counter- designation completes the last answer in the designation that was cut off, so including it averts misunderstanding or distortion caused by introduction of only part of the deposition.

	you wrote in Exhibit 291? A. Yes. I wrote this message same as the...		assert their designations as affirmative designations, FRE 32(a)(4) and FRE 106 because this witness is not “unavailable.”	
Jianing Gao	28:13-23	20:7-9; 20:11- 14; 22:4-23:3;	To the extent Defendants assert their designations as affirmative designations, FRE 106, FRE 32(a)(4) (counterdesignations are permitted only under the rule of completeness, and Defendants cannot avoid this requirement by purportedly “redesignating” their counter designations as affirmative designations).	OVERRULED (P’s objection). The counter-designation provides context for the terms “fake cut” and “Coco,” so including it averts misunderstanding or distortion caused by introduction of only part of the deposition.
Jianing Gao	29:2-14	29:22-24; 30:2	To the extent Defendants assert their designations as affirmative designations, FRE 32(a)(4) and FRE 106 because this witness is not “unavailable.”	OVERRULED (P’s objection). See above, the Court’s explanation on Rule 611.
Xianyin Lin	6:20-22 XIANGYIN LIN, ·having been first duly sworn testified as follows:	See dkt. 473.		OVERRULED (D’s objection). Defendants’ objection not clearly stated.

1 2 3 4 5 6 7 8 9	Xianyin Lin	7:4-8 Q. · Will you please state and spell your name? A. · My name is Lin Xiangyin. English name is Xiangyin Lin, spelled as ·X-i-a-n-g-y-i-n, last name L-i-n.	See dkt. 473.		OVERRULED (D's objection). Defendants' objection not clearly stated.
10 11 12 13 14	Xianyin Lin	8:6-7 Q. · And where do you work? A. · I work at BabyBus.	See dkt. 473.		OVERRULED (D's objection). Defendants' objection not clearly stated.
15 16 17 18 19 20 21 22 23 24 25 26 27 28	Xianyin Lin	19:7-11 Q. ...videos, I was just asking about CoComelon. Did you watch CoComelon videos as part of your job at BabyBus as the leader of the Super JoJo development team? A. Yes, I did.	See dkt. 473. 18:19-19:4 Q. · And as part of your role in leading the development of Super JoJo, did you watch CoComelon videos? A. · Yes. I would usually watch videos together with children. A. · Yes. I would usually watch videos together with children. the Super JoJo development team? A. · I not only watched CoComelon's video, I also watched all of the relevant children's	To the extent Defendants assert their designations as affirmative designations, FRE 32(a)(4) and FRE 106 because this witness is not "unavailable."	OVERRULED (D's objection). Defendants' objection not clearly stated. OVERRULED (P's objection). See above, the Court's explanation on Rule 611.

		videos on YouTube.		
Xianyin Lin	29:1-5 Q. · You received Exhibit 18 that referenced 18 different CoComelon videos with links to them on YouTube in 2018 before any Super JoJo video · was developed at BabyBus; correct? A. · Yes.	See dkt. 473.		OVERRULED (D's objection). Defendants' objection not clearly stated.
Xianyin Lin	30:7-31:3	See dkt. 473.		OVERRULED (D's objection). Defendants' objection not clearly stated.
Xianyin Lin	33:11-17	See dkt. 473. 33:18-34:4	To the extent Defendants assert their designations as affirmative designations, FRE 32(a)(4) and FRE 106 because this witness is not "unavailable."	OVERRULED (D's objection). Defendants' objection not clearly stated. OVERRULED (P's objection). See above, the Court's explanation on Rule 611.
Xianyin Lin	40:5-8	See dkt. 473. 39:19-21; 39:23-25; 40:9- 12; 40:20-41:3	To the extent Defendants assert their designations as affirmative designations, FRE 32(a)(4) and FRE 106 because this	OVERRULED (D's objection). Defendants' objection not clearly stated. OVERRULED (P's objection). See above, the Court's explanation on Rule 611.

			witness is not “unavailable.”	
Xianyin Lin	42:13-18	See dkt. 473. 43:7-9; 43:12- 23; 44:12-17; 44:21- 45:7	To the extent Defendants assert their designations as affirmative designations, FRE 32(a)(4) and FRE 106 because this witness is not “unavailable.”	OVERRULED (D’s objection). Defendants’ objection not clearly stated. OVERRULED (P’s objection). See above, the Court’s explanation on Rule 611.
Xianyin Lin	47:24-50:20	See dkt. 473.		OVERRULED (D’s objection). Defendants’ objection not clearly stated.
Xianyin Lin	53:22-55:9	See dkt. 473. 53:11-17	To the extent Defendants assert their designations as affirmative designations, FRE 32(a)(4) and FRE 106 because this witness is not “unavailable.”	OVERRULED (D’s objection). Defendants’ objection not clearly stated. OVERRULED (P’s objection). See above, the Court’s explanation on Rule 611.
Xianyin Lin	58:24-59:1	See dkt. 473. 59:2-5; 59:12- 23	To the extent Defendants assert their designations as affirmative designations, FRE 32(a)(4) and FRE 106 because this witness is not “unavailable.”	OVERRULED (D’s objection). Defendants’ objection not clearly stated. OVERRULED (P’s objection). See above, the Court’s explanation on Rule 611.
Xianyin Lin	66:13-67:16	See dkt. 473.		OVERRULED (D’s objection). Defendants’ objection not clearly stated.
Xianyin Lin	69:10-15	See dkt. 473.		OVERRULED (D’s objection). Defendants’ objection not clearly stated.
Xianyin Lin	73:17-21	See dkt. 473.		OVERRULED (D’s objection). Defendants’

				objection not clearly stated.
Xianyin Lin	81:19-25	See dkt. 473.		OVERRULED (D's objection). Defendants' objection not clearly stated.
Xianyin Lin	110:1-6	See dkt. 473.		OVERRULED (D's objection). Defendants' objection not clearly stated.
Xianyin Lin	113:7-10	See dkt. 473.		OVERRULED (D's objection). Defendants' objection not clearly stated.
Xianyin Lin	116:1-8	See dkt. 473.		OVERRULED (D's objection). Defendants' objection not clearly stated.
Xianyin Lin	119:4-18	See dkt. 473.		OVERRULED (D's objection). See Docket No. 473.
Xianyin Lin	119:23-120:6	See dkt. 473. 120:23-121:3;121:5-11;121:13-17	To the extent Defendants assert their designations as affirmative designations, FRE 32(a)(4) and FRE 106 because this witness is not "unavailable."	OVERRULED (D's objection). See Docket No. 473. OVERRULED (P's objection). See above, the Court's explanation on Rule 611.
Xianyin Lin	122:7-10	See dkt. 473.		OVERRULED (D's objection). Defendants' objection not clearly stated.
Xianyin Lin	122:16-23	See dkt. 473.		OVERRULED (D's objection). Defendants' objection not clearly stated.
Xianyin Lin	123:6-124:16	See dkt. 473.		OVERRULED (D's objection). See Docket No. 473.

Xianyin Lin	125:13-23	See dkt. 473. 124:18-125:1;125:3-10	To the extent Defendants assert their designations as affirmative designations, FRE 32(a)(4) and FRE 106 because this witness is not “unavailable.”	OVERRULED (D’s objection). See Docket No. 473. OVERRULED (P’s objection). See above, the Court’s explanation on Rule 611.
Jiachun Xue	6:14-17	See dkt. 473.		OVERRULED (D’s objection).
Jiachun Xue	7:5-7	See dkt. 473.		OVERRULED (D’s objection).
Jiachun Xue	8:2-3	See dkt. 473.		ALREADY OVERRULED (D’s objection). See Docket No. 473.
Jiachun Xue	8:6-19	See dkt. 473.		OVERRULED (D’s objection).
Jiachun Xue	40:17-20	See dkt. 473.		OVERRULED (D’s objection).
Jiachun Xue	40:25-41:15	See dkt. 473.		OVERRULED (D’s objection).
Jiachun Xue	50:13-51:15	See dkt. 473. 9:10-18; 11:14- 16; 11:24-12:5	To the extent Defendants assert their designations as affirmative designations, FRE 32(a)(4) and FRE 106 because this witness is not “unavailable.”	OVERRULED (D’s objection). OVERRULED (P’s objection). See above, the Court’s explanation on Rule 611.
Jiachun Xue	51:19-20	See dkt. 473.		OVERRULED (D’s objection).
Jiachun Xue	51:24	See dkt. 473.		OVERRULED (D’s objection).
Jiachun Xue	52:1-53:17	See dkt. 473. 9:10-18; 11:14- 16; 11:24-12:5	To the extent Defendants assert their designations as	OVERRULED (D’s objection).

			affirmative designations, FRE 32(a)(4) and FRE 106 because this witness is not “unavailable.”	OVERRULED (P’s objection). See above, the Court’s explanation on Rule 611.
Jiachun Xue	57:1-10	See dkt. 473. 9:10-18; 11:14- 16; 11:24-12:5	To the extent Defendants assert their designations as affirmative designations, FRE 32(a)(4) and FRE 106 because this witness is not “unavailable.”	OVERRULED (D’s objection). OVERRULED (P’s objection). See above, the Court’s explanation on Rule 611.
Lei Sun	8:11-17	See dkt. 473.		OVERRULED (D’s objection).
Lei Sun	9:4-9	See dkt. 473.		ALREADY OVERRULED (D’s objection). See Docket No. 473.
Lei Sun	9:13-14	See dkt. 473.		OVERRULED (D’s objection).
Lei Sun	9:22-10:7	See dkt. 473.		OVERRULED (D’s objection).
Lei Sun	10:13	See dkt. 473.		OVERRULED (D’s objection).
Lei Sun	21:5-7	See dkt. 473.		OVERRULED (D’s objection).
Lei Sun	21:17-22	See dkt. 473.		ALREADY OVERRULED (D’s objection). See Docket No. 473.
Lei Sun	26:14-23	See dkt. 473. 24:23-25:21	To the extent Defendants assert their designations as affirmative designations, FRE 32(a)(4) and FRE 106 because this	OVERRULED (D’s objection). OVERRULED (P’s objection). See above, the Court’s explanation on Rule 611.

			witness is not “unavailable.”	
Lei Sun	39:8-13	See dkt. 473. 28:21-24; 29:10-15; 29:21-30:12; 31:12- 23; 34:22- 35:09; 36:2-6; 37:7-10; 37:22- 38:10; 38:12-14	To the extent Defendants assert their designations as affirmative designations, FRE 32(a)(4) and FRE 106 because this witness is not “unavailable.”	OVERRULED (D’s objection). OVERRULED (P’s objection). See above, the Court’s explanation on Rule 611.
Lei Sun	43:17-21	See dkt. 473.		OVERRULED (D’s objection).
Lei Sun	94:13-16	See dkt. 473.		ALREADY OVERRULED (D’s objection). See Docket No. 473.
Lei Sun	95:20-23	See dkt. 473.		ALREADY OVERRULED (D’s objection). See Docket No. 473.
Lei Sun	97:10-15	See dkt. 473.		ALREADY OVERRULED (D’s objection). See Docket No. 473.
Lei Sun	97:21-99:10	See dkt. 473.		ALREADY OVERRULED (D’s objection). See Docket No. 473.